NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2935

HAYEDEN HOLDINGS, LTD

v.

FIDELITY NATIONAL TITLE INSURANCE COMPANY,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:24-cv-02204)
District Judge: Honorable Mia R. Perez

Submitted Under Third Circuit L.A.R. 34.1(a)
September 15, 2026

Before: HARDIMAN, BIBAS, and RENDELL, *Circuit Judges*.

(Filed: September 17, 2026)

OPINION*

HARDIMAN, *Circuit Judge*.

Fidelity National Title Insurance Company appeals a judgment entered by the

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

District Court for Hayden Holdings LTD after a jury trial. We will affirm.

I

In late 2010, Hayden purchased real estate in Philadelphia and bought title insurance from Fidelity. The property, which includes a retail building and a parking lot, abuts another retail property. The parking lot on Hayden's land provides convenient access to both buildings, so customers of the businesses on the abutting property frequently use it.

The owner of the abutting property—Top of the Hill Properties—obtained an injunction from a Pennsylvania trial court in 2017 that prevented Hayden from interfering with its customers' use of the parking lot because Top of the Hill had an express easement. In 2020, the Pennsylvania Commonwealth Court affirmed the injunction because Top of the Hill had an irrevocable license, rather than an express easement, for such use.

Soon after the Superior Court ruled, Fidelity issued Hayden a check for $33,000, which represented what Fidelity believed to be the loss in the title's market value caused by this newly adjudicated encumbrance. Hayden demanded payment in the amount of the policy limit, $1.2 million. When Fidelity refused that demand, Hayden filed this suit for breach of contract.

Under the policy, Fidelity insured Hayden against "loss or damage" caused by "[a]ny defect in or lien or encumbrance on the Title." App. 1029. When one of those clouds on title appears, the policy obligates Fidelity to pay "the difference between the value of the Title as insured and the value of the Title subject to the risk insured against," up to the policy limit. App. 1031. It also requires Fidelity to make any required payment within 30 days after "liability and the extent of loss or damage have been definitely fixed in accordance with" any relevant conditions in the policy. *Id.*

Hayden's suit proceeded to a jury trial, where the parties' experts presented dueling calculations of the title's market value with and without the encumbrance. Richard F. Wolf, a certified real-estate appraiser in Pennsylvania, testified for Hayden that the diminution in title value was $1.1 million. He opined that the market value of the title without the encumbrance was $2.5 million. He reached that figure after determining that the most likely purchaser of the property (if unencumbered) would have been a developer of mixed-use retail-and-multifamily-residence buildings. But Wolf opined that the parcel's market value with the encumbrance was only $1.4 million because it was not a candidate for development.

Fidelity countered with its own expert, J. Bushnell Nielsen, who opined that Wolf's analysis was inaccurate. According to Nielsen, the proper measure of diminution in the value of Hayden's title is the difference in value between a shopping center with an exclusive parking lot and one with a shared lot. Using those comparators, Nielsen testified, Fidelity's original offer of $33,000 was the proper figure.

Prior to trial, Fidelity moved *in limine* to preclude Wolf's testimony under Rules 402, 403, and 702 of the Federal Rules of Evidence. Fidelity argued that because the policy language and Pennsylvania law precluded Wolf's valuation method and required Nielsen's, Wolf's testimony was irrelevant, unhelpful, and prejudicial. Fidelity also requested a jury instruction reflecting that view of the law. The District Court denied the motion *in limine* and declined to give the proposed instruction. After the parties presented their evidence, the jury awarded Hayden nearly $1.1 million. The District Court added prejudgment interest over Fidelity's objection, and with litigation costs the total award was just under $1.4 million.

Fidelity timely appealed, contending that the District Court should have excluded Wolf's testimony, given Fidelity's requested jury instruction, and declined to award prejudgment interest.

II[1]

A

Fidelity's objections to Wolf's testimony and its requested jury instruction rest on the legal argument that "title insurance covers losses of value *based on how the property was actually being used when the defect came to light*." Fidelity Br. 20. If that were true, Hayden's damages would be the diminution in value between the retail center with an exclusive lot and the current shared lot. As the District Court recognized, however, that assertion lacks any basis in the policy language or in Pennsylvania law.[2]

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[1] The District Court had jurisdiction under 28 U.S.C. § 1332. We have jurisdiction under 28 U.S.C. § 1291. The parties agree that Pennsylvania law governs the substantive issues. We review evidentiary rulings and jury instructions for abuse of discretion, which includes plenary review of whether the challenged decisions rested on incorrect legal precepts. *Forrest v. Parry*, 930 F.3d 93, 113 (3d Cir. 2019); *Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 361 (3d Cir. 1999). We review de novo the District Court's determination that Hayden Holdings is entitled to mandatory prejudgment interest under state law. *See Meyer v. CUNA Mut. Ins. Soc'y*, 648 F.3d 154, 162 (3d Cir. 2011).

[2] At times, Fidelity suggests that Wolf did not value Hayden's plot as it existed but instead valued it as though it already contained a completed mixed-use retail and multifamily-residence building. To some extent, that is expected: to accurately project the

In Pennsylvania, "insurance policies are contracts," which courts interpret using "traditional principles of contract interpretation." *Kurach v. Truck Ins. Exch.*, 235 A.3d 1106, 1116 (Pa. 2020). That means the words in an insurance policy presumptively carry "their plain and ordinary meaning." *Id.* The policy here entitled Hayden Holdings to "the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy," up to the policy limit. App. 1031. The natural interpretation of the phrase "value of the Title as insured" is the amount of money someone would have been willing to pay to acquire that title with no encumbrances or defects. *See Value*, Black's Law Dictionary (12th ed. 2024) ("The monetary worth or price of something; the amount of goods, services, or money that something commands in an exchange."); *accord In re Gordon*, 176 A. 494, 496 (Pa. 1935) (loss under a title-insurance policy is "the difference in the market value" between the title as insured and the title with the later-discovered encumbrance). Fidelity does not explain how the language of the policy could limit the universe of potential buyers to those who would put the property to the same use as Hayden, even though buyers intending a different use would pay more.

Nor does Fidelity's caselaw support such a reading. Fidelity first quotes *Narberth Building & Loan Association v. Bryn Mawr Trust Co.*, 190 A. 149 (Pa. Super. Ct. 1937)

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price of a lot for development, there must be some projection of the lot's likely value once it is ultimately developed. But insofar as Fidelity suggests that Wolf's $2.5 million figure represents the value of a fully developed lot, that is inaccurate. Wolf stated expressly that "my value of two and a half million dollars is just for the *opportunity* to develop it." App. 714 (emphasis added). And even a cursory review of his report reveals that he projected what a developer would pay for the development *opportunity*.

for the proposition that "loss [is] required to be determined as of the date of the [insured's] demand." Fidelity Br. 20 (quoting *Narberth*, 190 A. at 151). But the relevant date for calculating loss is undisputed. Fidelity attempts to read into the quoted language an implied principle that the amount of loss must always be determined by evaluating the insured property as though it will continue to be used as the insured used it on the relevant date. The opinion does not support *that* principle. *Narberth*, 190 A. at 150 ("The *sole* question involved on this appeal concerns the *date* as of which plaintiff is entitled to have damages assessed." (emphasis added)).

Fidelity next cites *Overholtzer v. Northern Counties Title Insurance Co.*, 253 P.2d 116 (Cal. Dist. Ct. App. 1953). But that case—assuming it even bears on Pennsylvania law—holds only that the insured should have been reimbursed for the diminution in property value as of the date the defect was discovered, rather than the date the policy was purchased. *Id.* at 125. Under that timing rubric, the insured would get credit in the title valuation for improvements made to the titled property after the policy was purchased. *See id.* The decision says nothing about how to treat a market valuation based on the property's value to a buyer who would use the property differently than the insured. *Accord Tait v. Commw. Land Title Ins.*, 103 Cal. App. 5th 271, 282–87 (2024).

For these reasons, the District Court rightly rejected Fidelity's contention that Hayden's property had to be valued as if it would continue to be used only as a shopping center. So it did not abuse its discretion when it denied Fidelity's motion *in limine* and requested jury instruction.

B

Fidelity next argues that Hayden was not entitled to mandatory prejudgment interest, or alternatively that it was entitled to interest only from the date it produced an expert report on the diminution in the title's value. Neither argument persuades.

First, Hayden is entitled to prejudgment interest as a matter of right because Fidelity's breach of contract consisted of a failure to pay a "fixed or ascertainable" sum once it was due. Restatement (Second) of Contracts § 354(1) (1981); *see TruServ Corp. v. Morgan's Tool & Supply Co.*, 39 A.3d 253, 263 (Pa. 2012). A sum is ascertainable if it can be calculated using known standards like "market value." *Am. Enka Co. v. Wicaco Mach. Corp*., 686 F.2d 1050, 1056 (3d Cir. 1982) (quoting *Richards v. Citizens Nat. Gas Co.*, 18 A. 600, 600 (Pa. 1889)). Thus, Pennsylvania courts have long treated insurers' indemnity obligations as ascertainable sums where they depend on the market values of the insured properties. *See J. Purdy Cope Hotels Co. v. Fid.-Phenix Fire Ins. Co*., 191 A. 636, 639–40 (Pa. Super. Ct. 1937). The parties' dispute over the sum's calculation does not make it unascertainable. *Am. Enka Co.*, 686 F.2d at 1057.

Fidelity does not dispute that the market value of the title to Hayden's parcel was ascertainable but instead contends that the valuations Hayden presented to the jury were based purely on an "engineer's design drawing" and not on market analysis. Fidelity Br. 29. Fidelity misses the point. The engineer's design demonstrated the uses to which Hayden's land could be put without the encumbrance, which was necessary to determine how much a willing buyer would pay for it.

Second, Fidelity is wrong that prejudgment interest began accruing only in

October 2024, when Hayden produced a valuation, rather than on May 28, 2020. "[I]nterest is recoverable from the time for performance on the amount due." Restatement (Second) of Contracts § 354(1) (1981); *see also id.* cmt. b. Here, Fidelity's payment was due 30 days after liability and loss were "definitely fixed in accordance with" any relevant conditions in the policy. App. 1031. The parties agree that the loss occasioned by the title encumbrance and Fidelity's liability for that loss were fixed on April 28, 2020. And because Fidelity has not argued that any condition contained in the policy would toll that date, payment was due 30 days thereafter.

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For the reasons stated, we will affirm.